

Preliminary Amendment
Inventor Name: Mitchell Kirschner, et al.
Attorney Docket No.: 718689.4

DRAWING AMENDMENTS

IN THE DRAWINGS:

NONE

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REMARKS

The Applicant respectfully requests that the pending claims 1 through 22 be canceled from the application and new claims 23 through 82 be entered. No new matter is introduced by this amendment.

In response to the Office Action dated July 15, 2003 finally rejecting Ser. No. 09/972,664, from which the present application depends, Applicant enters the following remarks:

The Examiner rejected the then pending claims under 35 U.S.C. 103(a) as being unpatentable over Hermelin et al. (U.S. Patent No. 6,258,846) in view of acknowledged prior art Opheim (U.S. Pat. No. 6,346,231), Manufacturing Chemist & Aerosol News and Cuca (U.S. Patent No. 4,656,231.)

The Applicant reaffirms traversal of this rejection. However, Applicant maintains that even if the references cited by the Examiner are properly combinable to teach the Applicant's invention, the rejection cannot stand given that the references are not prior art.

Hermelin et al. '846 has a filing date of June 1, 1999, and Opheim '231 has a filing date of October 6, 1999. The Applicants application Ser. No. 09/972,664 was a CIP of Application Ser. No. 09/320,559 filed May 27, 1999. Therefore, the effective filing date of Applicant's pending application predates the filing dates of the references cited by the Examiner.

The remaining references, Manufacturing Chemist & Aerosol News and Cuca '231, are cited for the use of a soft gel and the known properties of calcium carbonate, respectfully. The

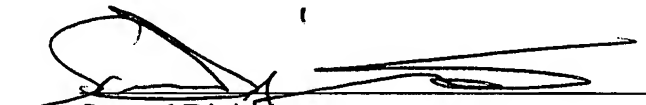
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references do not individually nor in combination teach Applicant's invention. We respectfully submit that the rejections cited in the prosecution of the 09/972,664 application were improper.

If any issue regarding the allowability of any of the pending claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner's amendment, or if the Examiner should have any questions regarding the present amendment, it is respectfully requested that the Examiner please telephone Applicant's undersigned attorney in this regard.

Respectfully submitted,

Date: 9 JAN 04


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